

Freedom of Information Act Procedures Office of Enforcement and Compliance Assurance March 2015

Introduction

On September 30, 2014, the Environmental Protection Agency (“EPA”) issued its “Freedom of Information Act Policy” and “Procedures for Responding to Freedom of Information Act Requests” (“Agency FOIA Procedures”) (Appendix A). The Agency FOIA Procedures provide the basic processes that all parts of the Agency must follow in responding to FOIA requests, in accordance with applicable laws, regulations and policies. This guidance – the Office of Enforcement and Compliance Assurance Freedom of Information Act Procedures (“OECA FOIA Procedures”) – has been developed as required by the Agency FOIA Procedures. The OECA FOIA Procedures set forth the process OECA staff should follow when receiving and processing FOIA requests. In addition, OECA staff should carefully review the Agency FOIA Procedures upon receipt of a FOIA. The Agency FOIA Procedures are very detailed and thorough, and provide a good overview of the overall FOIA process for the Agency. The OECA FOIA Procedures are intended to be consistent with the Agency FOIA Procedures; if there is a conflict between the two guidance documents, the Agency FOIA Procedures control. Finally, OECA staff may want to review the 2014 OECA memorandum entitled “OECA’s Commitment to Fulfilling Its FOIA Responsibilities” for additional helpful information on responding to FOIA requests (see Appendix B).

It is critical that OECA staff give high priority to FOIA requests and respond in a timely manner, with an open and transparent approach. OECA staff should also keep their managers informed of the status of any FOIA responses, to prevent last-minute issues and to enable OECA to respond to FOIA requests within the applicable time period. The Agency tracks overdue responses and publishes a quarterly report by AAsip. The OECA Immediate Office closely tracks the overdue FOIAs, and OECA Office Directors are encouraged to regularly review FOIAs assigned to their office for timeliness. Ultimately, it is our duty as public servants to respond to FOIA requests as promptly as possible, with a diligent search of all possible sources of responsive records.

Given tight resources, it is also important that OECA staff respond to FOIA requests as efficiently as possible, coordinating closely, where appropriate, with other OECA staff, OECA offices, Agency programs, and the Regions. Each OECA office has a FOIA Point of Contact – listed in Appendix C – who is available to assist with FOIA responses (discussed further below). OECA offices are encouraged to develop their own internal procedures for processing FOIAs based on the OECA and Agency FOIA Procedures.

A final note: OECA is always looking for ways to improve and streamline its FOIA process. If OECA staff have suggestions in this regard, please feel free to contact Maya Newman, Linda Person, or Erin Miles in OECA’s Immediate Office.

Background

The Freedom of Information Act ("FOIA")

The FOIA, 5 U.S.C. § 552, was passed into law in 1966. The law gives any person the right to obtain access to federal agency records except when such records or portions of such records are protected from public disclosure by a FOIA exemption.

The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time to respond from ten working days to twenty working days. The Open Government Act of 2007 made changes to promote a more open and accountable government and established an agency Chief FOIA Officer and Public Liaison Officers to assist in reducing delays, increasing transparency and resolving disputes. The Open Government Act also promotes the use of technology to achieve more efficient disclosure of information to the public.

FOIAonline

The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public. To improve its FOIA management and processes, the EPA deployed FOIAonline as its FOIA management system in October 2012. A number of Federal agencies use FOIAonline to manage their FOIA requests.

All FOIA requests received at the EPA are managed throughout their lifecycle in FOIAonline. All records provided by the EPA in response to a FOIA request are entered into FOIAonline for public viewing or searching unless the volume of paper records is very large and conversion to electronic format is not practical.

To manage FOIA requests in FOIAonline, a user will need to access FOIAonline using a PIV card (*e.g.*, employee ID). For issues accessing FOIAonline, OECA staff can contact the FOIAonline help desk at (844) 238-7744. Most OECA staff will not need to manage FOIAs in the system, and should work with their Office's FOIA Point of Contact to access and manage FOIAs. For more information on FOIAonline, including training and user guides, please see the Agency's FOIA Procedures and the FOIAonline website at <https://foiaonline.regulations.gov/foia/action/public/home>.

Agency Receipt of a FOIA Request

The FOIA process officially begins when a request is received in any Agency FOIA Office (*i.e.*, the central Headquarters FOIA office located in the Office of Environmental Information or a Regional FOIA office). The public is instructed to submit FOIA requests to the Agency via FOIAonline, postal mail, email, or hand delivery. Requests received after 5pm (EST) or on weekends or holidays are not considered received until the next business day. If a request is not received through FOIAonline, the applicable Agency FOIA Office will enter the request in the system within one working day of receipt and issue an acknowledgement through FOIAonline if an email address is provided (the Agency FOIA Office will use postal mail to acknowledge receipt if an email address is not provided).

Once an Agency FOIA Office receives a FOIA request, it will verify that the request: 1) is in writing; 2) provides a mailing address; 3) asks for Agency records; and 4) reasonably describes the records sought. A request is considered sufficient if it enables an Agency employee familiar with the subject area to locate the record with a reasonable amount of effort. Then, the applicable Agency FOIA Office (either the main Headquarters FOIA office or a Regional FOIA office) will distribute the FOIA – via FOIAonline – to the appropriate AAShip or Regional office (called the “Action Office”). Please see pages 4-6 of the Agency FOIA Procedures for more information on how the FOIA process is initiated with respect to the Agency.

Time for Responding

The EPA has twenty (20) working days to respond to a FOIA request. See 40 C.F.R. § 2.104(a). The 20 day period begins when an Agency FOIA Office has (1) received, reviewed and acknowledged an incoming request and (2) determined that the request is with the correct FOIA Office. As a reminder, the “correct FOIA Office” is a central Regional FOIA office or the central Headquarters FOIA office in OEI. FOIAs that are sent to the wrong AAShip or misdirected within OECA do not stop the 20-day clock.

Responding to FOIAs within the 20-day time period (or authorized extension of time—see further discussion below) is important – if EPA fails to respond within the applicable timeframe, requesters may seek judicial review to obtain the records without first making an administrative appeal. Even more importantly, OECA staff should respond to FOIA requests in the appropriate time frame because it is our obligation to the public. Thus, it is very important that OECA staff managing and responding to FOIAs address incoming requests promptly. The process for obtaining more time to respond to a FOIA request is discussed below.

There are some circumstances that may impact the time period for response, such as when the Agency approves an “expedited processing” request (see page 5 of the Agency FOIA Procedures), a one-time “stop the clock” situation (discussed further below), or where the requestor has granted the Agency more time to respond (also discussed below). If an OECA staff lead for a FOIA request believes that one of these situations may apply, please review this guidance and the Agency FOIA Procedures carefully for instructions on how to proceed.

OECA’s FOIA Staff

OECA has many staff who can assist with managing FOIA requests that come to our program. The primary FOIA Coordinator for OECA (“OECA’s Primary FOIA Coordinator”) is located in OECA’s Immediate Office. Each OECA staff office has its own FOIA point of contact (the “OECA Office FOIA POC”). For a complete listing of OECA’s FOIA Points of Contact, see Appendix C.

The main role of OECA’s Primary FOIA Coordinator is to manage – generally through FOIAonline - FOIA requests sent to OECA. This involves sending incoming requests to the appropriate OECA staff office, helping track the requests to ensure a timely response, and assisting with coordinating requests among OECA offices.

As noted above, each OECA staff office (*e.g.*, OCE, OEJ, etc.) has its own FOIA POC. The OECA Office FOIA POCs receive the FOIA requests via FOIAonline that are sent from OECA’s Primary FOIA Coordinator to an OECA office. An OECA Office FOIA POC reviews an incoming FOIA, ensures that the FOIA request has been appropriately assigned to that office, and works with staff to respond to

the request. The OECA Office FOIA POC also works closely with OECA's Primary FOIA Coordinator to ensure timely responses to FOIA requests and on other issues related to general FOIA request management.

OECA Procedures

The following are procedures OECA staff should follow – in conjunction with the Agency FOIA Procedures – to manage and respond to FOIA requests. These are intended to be consistent with the Agency FOIA Procedures; it is important that OECA staff responding to a FOIA request review the Agency guidance as well.

OECA Receives a FOIA Request

When OECA is assigned a FOIA request (via FOIAonline), OECA's Primary FOIA Coordinator is alerted via email. The Primary FOIA Coordinator also regularly monitors FOIAonline for incoming FOIA requests. Within one working day of receiving a FOIA, OECA's Primary FOIA Coordinator (or designated backup) will assign the request to the appropriate OECA office using FOIAonline.

- The OECA office that likely has the most responsive documents will be considered the lead OECA office for purposes of the FOIA. OECA's Primary FOIA Coordinator may also assign other OECA offices (via "tasks" in FOIAonline) to look for records responsive to the request.
- If the description of the records sought in the FOIA is vague, and thus the OECA Primary FOIA Coordinator is unable to determine which office should receive the assignment, then OECA's Primary FOIA Coordinator should contact the requestor for additional information. Any communications with the requestor should be documented in FOIAonline. Note that this may count as the Agency's one "stop the clock" situation –see the section below on contacting the requestor.
 - ✓ **Note:** If an OECA staff person receives a FOIA request directly from a citizen, *e.g.*, through email, the staff person should work with his/her office's FOIA POC and the OECA Primary FOIA Coordinator to provide the FOIA to the main Headquarters FOIA Office, which will assign the FOIA to the proper program or Region via FOIAonline.
 - ✓ **Note:** OECA may also be asked to provide documents to another AAsip or Region in response to a FOIA (typically OECA would be "tasked" via FOIAonline). In this event, the OECA Primary FOIA Coordinator will distribute the task in the same manner as discussed in this guidance. The OECA offices that may have responsive documents should conduct searches for relevant records promptly and thoroughly, and in accordance with any matter-specific guidance from the lead AAsip or Region.

FOIA Request is Sent via FOIAonline to One or More OECA Offices; Staff Lead is Assigned

Each OECA office has a FOIA POC (see Appendix C) who will closely monitor FOIAonline for incoming FOIA requests sent from OECA's Primary FOIA Coordinator. When an OECA office receives a FOIA request, the OECA Office FOIA POC should read the request and designate an OECA staff person, Division or Branch in that office to serve as lead for the response (if a Division or

Branch is assigned a FOIA, someone in that group should be responsible for assigning a staff lead for the FOIA request).

If the OECA Primary FOIA Coordinator incorrectly assigns a FOIA to an OECA office, the OECA Office FOIA POC should alert the OECA Primary FOIA Coordinator within two working days to have it re-assigned. This is critical to ensure that the correct OECA office has sufficient time to respond, since misdirected FOIAs within OECA do not impact the 20-day clock.

- If the FOIA is incorrectly assigned to OECA, OECA (via the OECA Primary FOIA Coordinator) will have two working days to notify the Agency FOIA Office.

Consider whether Other OECA Offices, EPA Programs, or Regions should Participate in the Response Process

Upon receiving a FOIA request, the staff person assigned as lead should consider whether other OECA or EPA programs, or the Regions, may also have responsive documents.

- If another OECA office might have responsive documents, the OECA staff lead should work with his/her OECA Office FOIA POC to task another OECA office via FOIAonline and also to notify the OECA Primary FOIA Coordinator; this should be completed within two working days of receipt of the FOIA. This should also be noted in the comments section for the FOIA in FOIAonline.
- If the request needs to be coordinated with other Agency Programs or Regions, the OECA Office FOIA POC should immediately contact OECA's Primary FOIA Coordinator, via email, identifying the applicable Agency program(s) or Region(s) to ensure a timely assignment is made. OECA (via the OECA Primary FOIA Coordinator) has two working days from receipt of a FOIA to notify the Headquarters FOIA Office that another EPA Program or Region may have responsive documents.
 - ✓ **Note:** When a request is assigned to multiple offices, the office anticipated to have the most responsive records will be the lead for the response (and will be identified as such in FOIAonline). This office will be responsible for gathering all of the responsive documents, ensuring that privilege reviews were conducted, and determining final costs/fees for the search.

Determine Search Parameters and Estimate Fees

Upon receipt of a FOIA assignment, the OECA staff lead should determine search parameters (see page 7, step 6 of the Agency FOIA Procedures). This includes determining the cutoff date for records subject to the request (*i.e.*, what start and end dates should be used for the search) and the subject matter of the request. It is important to consider both the timeframe for the request and the subject matter right away in case it is necessary to follow up with the requestor for clarification or more information on the request. Typically, a response will include records in the Agency's possession on the date the FOIA request was submitted, unless the request sets forth a different timeframe.

- ✓ **Note:** EPA is not required to conduct new research or analyses to respond to a FOIA request. Our obligation is to diligently search for existing, responsive documents and information.

The OECA staff lead should also work with the OECA Office FOIA POC to estimate the processing fees right away, in accordance with 40 C.F.R. § 2.107 (unless the requestor has received a fee waiver from the Agency FOIA Officer). This is necessary to ensure that the requestor is aware of the anticipated cost and is willing to incur that cost, or, alternatively, the requestor may wish to narrow the request (see page 8, step 8 of the Agency FOIA Procedures for more detail).

Contact the Requestor (if necessary)

The OECA staff lead should contact the requester, if necessary, to 1) receive clarification of the incoming FOIA request; 2) request a due date extension; and/or 3) receive a guarantee of fee payment.

- **Request Clarification:** If the OECA staff lead determines that the request requires clarification or additional information (for example, the scope of the request is unclear), the staff lead should reach out to the requestor for such information. The time it takes the requestor to respond with clarification is excluded from the 20-day response deadline. Note that EPA can only stop the clock for this purpose one time, so it is important to seek as much clarifying information as possible during the first interaction with the requestor (and it is possible that the OECA Primary FOIA Coordinator has already contacted the requestor for clarification – there should be a note in FOIAonline indicating that this occurred). OECA staff should work with their Office FOIA POC to document in FOIAonline any interactions with the requestor.
- **Due Date Extension:** The FOIA requires agencies to respond to FOIA requests within 20 working days. If the response cannot be completed within 20 working days, EPA may extend the due date if an “unusual circumstance” exists (see pages 8-9 of the Agency FOIA Procedures for a discussion of what constitutes an “unusual circumstance” and the extensions allowed). Even if an unusual circumstance does not exist, OECA can still ask for a reasonable extension from the requestor. If an extension is necessary, the OECA staff lead should carefully review the Agency FOIA Procedures for the rules and procedures relating to extensions, and then contact the requester to obtain additional time. All interactions with the requestor should be memorialized in FOIAonline.
 - ✓ **Note:** If the requestor does not agree to an extension, EPA must fulfill the request as soon as possible. The requestor may file an administrative appeal or may pursue litigation.
- **Guarantee of Payment:** Unless the requestor has received a fee waiver, the Agency FOIA Procedures require an assurance of payment from the requester if fees are expected to exceed \$25.00 or an amount specified by the requestor. If the requester has not provided a specified amount they are willing to pay in their request or if the cost will exceed an amount they have provided, the OECA staff lead, working with the OECA Office FOIA POC, will need to contact the requester, inform them of the approximate cost to complete the request, and have the requestor provide in writing an assurance of payment. The EPA’s FOIA Regulations (40 C.F.R. § 2.107(j)) define circumstances where it may be appropriate to require advance payment of the estimated fees, such as if the fees are expected to exceed \$250.

Collect and Review Records

Soon after receiving a FOIA, the OECA staff lead for the FOIA should start searching for, collecting and reviewing records within the scope of the request. This process may involve:

- Identifying other OECA or Agency staff who may have responsive documents, and coordinating document collection and review with them.
- Notifying the OECA Immediate Office as soon as possible if Assistant Administrator, Deputy Assistant Administrator, or other Immediate Office records are sought.
- For large and/or complex document collections, coordinating with OECA's Primary FOIA Coordinator and the Office of General Counsel's FOIA Expert Assistance Team for assistance and advice.
- Where appropriate, consulting with other federal agencies.
- Where appropriate, alerting managers/supervisors regarding a particular FOIA request to ensure that OECA management is aware of any potential issues.

The OECA staff lead (and if appropriate, a team of staff) should start reviewing collected documents right away. Documents should be reviewed for responsiveness and privilege, and redacted where appropriate (see pages 9-10 of the Agency FOIA Procedures for more information on redacting, withholding documents, etc.). The OECA staff lead should work with their Office FOIA POC to ensure that a copy of both an original and redacted document is stored in FOIAonline (unless subject to special handling procedures, as in the case with a large volume of documents).

- ✓ **Note:** All records released or withheld in response to a FOIA request must be reviewed by two knowledgeable staff, including one manager or supervisor. This helps ensure openness, transparency, consistency and the appropriate application of the FOIA exemptions.
- ✓ **Note:** If staff maintain records in their files after applicable records schedules for those documents have passed, they must provide those documents, where relevant, in response to a FOIA request.

Prepare Response Letter

After review is complete, the OECA staff lead will work with the Office FOIA POC to release responsive, non-exempt records via FOIAonline. The OECA staff lead must also prepare a response letter that includes:

- The FOIA tracking number
- Certain information about withheld documents (see page 11, Agency FOIA Procedures)
- Appeal language, if appropriate (see page 11, Agency FOIA Procedures for the circumstances where appeal language may be appropriate).
- Notice, where applicable, that the fees for processing the request are not billable (*i.e.*, equal to or less than \$14.00). Note that FOIAonline will generate an invoice for billable fees.
- The name and title of the applicable OECA Authorizing Official. In most cases, this will be the OECA Office Director or Division Director.

Sample FOIA letters can be found on the intranet at <http://intranet.epa.gov/foia/FOIA-letters.html>.

Respond to Request

The final response to the FOIA request, the response letter, and an invoice should be scanned into FOIAonline by the responding OECA office. If the volume of paper records is very large and

conversion to electronic format is not practical or the response is subject to special handling requirements or policies, the Agency FOIA Officer will consider granting an exception to the requirement to load the records into FOIAonline (see page 12 of the Agency FOIA Procedures for more details on this exception).

- The OECA staff lead should notify the requestor via email that responsive records are available in FOIAonline. Where no email is available, the response package should be provided by postal mail.
- The OECA staff lead should ensure that those responding to the FOIA request have provided information on search and review time such that the OECA staff lead can input cost information into FOIAonline.
 - ✓ **Note:** Responsive records uploaded to FOIAonline are available for public searching and viewing.

Close Out the FOIA

Once all responsive documents and accompanying information are in FOIAonline, the OECA Office FOIA POC should alert the OECA Primary FOIA Coordinator via email that the FOIA can be closed. The responding OECA office should maintain the records according to applicable record schedules and make them readily available for responding to future requests.

Appendix A: Agency FOIA Policy and Procedures

Freedom of Information Act Policy	
EPA Classification No.: CIO 2157.1	CIO Approval Date: 09/30/2014
CIO Transmittal No.: 14-006	Review Date: 09/30/2017

*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19, dated July 7, 2005*

Freedom of Information Act Policy

1. PURPOSE

This policy establishes EPA requirements for complying with the Freedom of Information Act (FOIA) as amended, EPA FOIA regulations, and guidance issued by the U. S. Department of Justice and the National Archives and Records Administration. This policy supports open government through transparency, proactive disclosure, and, when possible, discretionary releases of information. It also serves as a framework for the associated procedures used to process FOIA requests and promote accountability for the timeliness and quality of EPA responses.

2. SCOPE AND APPLICABILITY

This policy addresses statutory, regulatory, federal guidance and Agency requirements for processing FOIA requests. The policy establishes management and staffing requirements for implementing FOIA; establishes accountability for managers and FOIA professionals; and sets requirements for using the FOIA management and tracking system that has been approved by the Agency's Chief FOIA Officer for managing the lifecycle of FOIA requests.

3. AUDIENCE

The audience for this policy includes all EPA organizations, officials, and employees. The audience for this policy is also contractors or grantees and others operating on behalf of the EPA, as described below.

4. BACKGROUND

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain federal agency records unless such records or portions of such records are protected from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or

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by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time for agencies to respond from ten working days to twenty working days. The OPEN Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and Public Liaison Officers to assist in reducing delays, increasing transparency and resolving disputes. In conformance with the OPEN Government Act, FOIA requests and EPA decisions are now managed in a FOIA management and tracking system. With very limited exceptions all EPA FOIA responses will be available in the Agency's FOIA management and tracking system for public viewing and searching.

EPA FOIA activities are performed across the Agency under the direction of the Chief FOIA Officer and the National FOIA Program located in the Office of Environmental Information (OEI). The National FOIA Specialists support the EPA FOIA community by providing training, offering guidance, supporting fee waiver and expedited processing activities and staffing the FOIA Requester Service Center. The Office of General Counsel and Offices of Regional Counsel provide legal advice to staff in EPA's program offices who are responding to a request. The Office of Inspector General is independent and provides advice on FOIA matters pertaining to its own organization.

5. AUTHORITY

Freedom of Information Act , 5 U.S.C. § 552.
EPA's FOIA Regulations, Title 40, C.F.R. Part 2, Subpart A.

6. POLICY

It is the policy of the EPA to manage Freedom of Information Act (FOIA) requests as follows:

1. FOIA requests submitted to the Agency will be processed in accordance with the FOIA, applicable Presidential Orders and memoranda, EPA's FOIA regulations, applicable guidance issued by the Department of Justice and the National Archives and Records Administration and applicable EPA FOIA guidance and procedures.
2. FOIA requests submitted to the Agency will be processed throughout their lifecycle using the FOIA management and tracking system approved by the Agency's Chief FOIA Officer.
3. Records found to be responsive to a request will be released unless a mandatory exemption applies or, for discretionary exemptions, the Agency determines that a foreseeable harm that would result from disclosure.
4. At least two knowledgeable individuals, who may be subject matter experts and

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including one manager, will review all documents before they are released to the public under the FOIA to improve accuracy and consistency in release determinations. One of the reviews may be performed by the subject-matter expert who processes the request. This is in addition to the review conducted by staff responsible for initially identifying and collecting documents.

5. Organizations will ensure that resources are allocated to comply with meeting FOIA requirements detailed in this policy.
6. Organizations will develop and maintain procedures for processing FOIA requests within their offices that document their business practices. Processing procedures will comply with this policy and with the Agency's FOIA processing procedures issued by the Chief Information Officer.
7. Organizations will identify individuals who have critical FOIA responsibilities in their organizations by name and by position, including but not limited to FOIA Officers, FOIA Coordinators, individuals who are authorized to make decisions regarding the releasability of records (see Item 8 below) and those who review documents before they are released to the public. This information will be made available to the Agency FOIA Officer and to all staff in the organization.
8. Determinations to release or withhold records will be made in accordance with the Freedom of Information Delegation of Authority, I-30. (See EPA Delegations Manual, Chapter 1, Section 30.)
9. FOIA responses will be posted to the Agency's FOIA management and tracking system unless posting the records will create a potential harm protected by a FOIA exemption or if a waiver to post records is granted by the Agency FOIA Officer.
10. FOIA professionals will have the knowledge, skills and abilities to perform their duties.
11. FOIA duties will be critical elements in the performance agreements of FOIA professionals.
12. FOIA professionals will take mandatory annual trainings identified by the Agency FOIA Officer.
13. Agency managers will have critical job elements in their performance agreements that establish accountability for ensuring their FOIA professionals have the knowledge, skills and abilities to perform their duties and respond in a timely manner to requests in accordance with the FOIA.
14. The Agency's FOIA Public Liaison will work to resolve FOIA issues with requesters and foster greater openness and transparency in the Agency's FOIA administration activities and its interactions with the public.
15. Organizations will comply with Agency procedures for processing FOIA requests, along with the guidance and direction issued by the Agency FOIA Officer.

7. RELATED DOCUMENTS

Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30.

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8. ROLES AND RESPONSIBILITIES

Action Office – The organizational unit that maintains the majority of records responsive to a FOIA request.

Agency FOIA Officer – The Agency FOIA Officer is the program manager for the National FOIA Program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA policies, procedures, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to Agency employees and other individuals covered under Section 3 of this policy. The Agency FOIA Officer is located in the Office of Environmental Information at EPA Headquarters.

Authorized Officials – The Deputy Administrator, Assistant Administrators, Associate Administrators, the Inspector General, the General Counsel, Heads of Headquarters Staff Offices and Regional Administrators (or their appropriate designee) are authorized under section 2.113(b) of EPA's FOIA regulations to issue initial determinations to release or withhold records in response to FOIA requests. Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30, provides that this authority may be redelegated to the office director level or equivalent, who may redelegate to the division director level or equivalent.

Chief FOIA Officer – The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program. *NOTE: This role is different from that of the Agency FOIA Officer above.*

FOIA Coordinators – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate Action Office or subject matter expert within the Program Office; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the Agency FOIA Officer. Each Headquarters Program Office has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer.

FOIA Officer – See "Agency FOIA Officer" or "Regional FOIA Officers."

FOIA Offices – The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

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Action Office. The locations are identified in the EPA's FOIA regulations for submitting FOIA requests. Agency FOIA Offices are located in each Region and in the National FOIA Program at Headquarters.

FOIA Professional – An EPA employee or contractor who directly interacts with FOIA requesters and is responsible for the day-to-day FOIA processing activities.

FOIA Public Liaison – The FOIA Public Liaison is the EPA point of contact for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

FOIA Requester Service Center – The FOIA Requester Service Center (FOIA Hotline) provides the public information on the status of their requests if they do not have access to FOIAonline, general information on how and where to submit a FOIA request, or information about the types of information available on the EPA's websites. The Center is staffed by the FOIA Public Liaison, Agency FOIA Officer and National FOIA Specialists. The Hotline number is 202-566-1667.

Managers and Supervisors – EPA managers and supervisors oversee FOIA Officers and FOIA Coordinators to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.

National FOIA Program – The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop Agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. The National FOIA Program is located in the Office of Environmental Information.

National FOIA Specialists – National FOIA Specialists manage the lifecycle of FOIA requests received at Headquarters; assign requests to Headquarters FOIA Coordinators; prepare responses to fee waiver and expedited processing requests; approve requests to extend due dates; respond to questions from Agency employees; and staff the FOIA Requester Service Center.

Office of General Counsel (OGC) – OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations for confidential business information (CBI) claims originating in HQ, and fee waiver appeal determinations, except when a conflict of interest arises; provides counsel on FOIA exemptions and exclusions; and assists the U.S. Department of Justice attorneys in FOIA litigation.

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Office of Inspector General (OIG) – OIG and the Counsel to OIG provide advice on FOIA matters pertaining to its organization; issue initial determinations and final decisions on FOIA appeals, final confidentiality determinations, except when a conflict of interest arises; provide counsel on FOIA exemptions and exclusions; and assist the U.S. Department of Justice attorneys in FOIA litigation.

Office of Regional Counsel (ORC) – ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the Agency FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

Regional FOIA Officers – Regional FOIA Officers assign requests to the appropriate Action Office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.

9. DEFINITIONS

Freedom of Information Act (FOIA) – The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

Records – Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes *all* tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. (NOTE: This is a broader definition than that used by the EPA records program and records schedules.)

Requester – Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from Federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not covered under this policy.

Responsive Record – A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

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10. WAIVERS

No waivers will be accepted from the requirements of this policy.

11. RELATED POLICIES, STANDARDS AND GUIDANCE

- Procedures for Responding to Freedom of Information Act Requests, CIO 2157-P-01.
- FOIA memoranda and guidance documents (<http://www.epa.gov/foia/reference.html>).
- FOIA guidance issued by the Department of Justice (<http://www.justice.gov/oip/foia-resources.html>).

12. MATERIAL SUPERSEDED

Interim Freedom of Information Act Policy (CIO 2157.0/Transmittal 13-004 dated June 28, 2013)

13. ADDITIONAL INFORMATION

For further information, please contact the Office of Environmental Information, Office of Information Collection.



Renee P. Wynn
**Acting Assistant Administrator for Environmental Information
and Chief Information Officer
U. S. Environmental Protection Agency**



INFORMATION DIRECTIVE PROCEDURE

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*Issued by the EPA Chief Information Officer,
Pursuant to Delegation 1-19, dated July 7, 2005*

Procedures for Responding to Freedom of Information Act Requests

1. PURPOSE

These procedures provide basic instructions for responding to Freedom of Information Act (FOIA) requests submitted to EPA. They address statutory, regulatory, policy, procedural and processing requirements to be followed by all EPA organizations and must comprise the core of all office-specific FOIA processing procedures.

2. SCOPE AND APPLICABILITY

The scope of these procedures covers work performed by EPA employees, grantees, contractors, and interns in support of FOIA administration activities in Headquarters, regional offices, field offices and EPA laboratories.

3. AUDIENCE

The audience for these procedures includes all EPA organizations, officials, and employees. The audience for these procedures is also contractors or grantees and others operating on behalf of the EPA.

4. BACKGROUND

The FOIA, 5 U.S.C. § 552, was enacted in 1966. The law gives any requester the right to obtain access to federal agency records unless such records or portions of such records are protected

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from public disclosure by one or more of the nine exemptions or three law enforcement exclusions contained in the statute. There are nine FOIA exemptions:

- 1) Classified national defense and foreign relations information.
- 2) Internal agency rules and practices.
- 3) Information that is prohibited from disclosure by another federal law.
- 4) Trade secrets and other confidential business information.
- 5) Inter-agency or intra-agency communications that are protected by legal privileges.
- 6) Information involving matters of personal privacy (protected under the Privacy Act or containing sensitive personally identifiable information).
- 7) Information compiled for law enforcement purposes, to the extent that the production of those records:
 - a) Could reasonably be expected to interfere with enforcement proceedings.
 - b) Would deprive a person of a right to a fair trial or an impartial adjudication.
 - c) Could reasonably be expected to constitute an unwarranted invasion of personal privacy.
 - d) Could reasonably be expected to disclose the identity of a confidential source.
 - e) Would disclose techniques and procedures for law enforcement, investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions.
 - f) Could reasonably be expected to endanger the life or physical safety of any individual.
- 8) Information relating to the supervision of financial institutions.
- 9) Geological information on wells.

The FOIA applies only to administrative agencies within the federal Executive Branch. It does not apply to records held by Congress, the courts, or by state, local, or tribal government agencies. The FOIA has undergone several amendments since its passage, including the e-FOIA amendments of 1996 and the Open Government Act of 2007. The e-FOIA amendments clarified how electronic records should be handled under the FOIA and extended the statutory time to respond from ten working days to twenty working days. The Open Government Act of 2007 made changes to promote a more open and accountable government and established a requirement for each agency to have a Chief FOIA Officer and a FOIA Public Liaison to assist in reducing delays, increasing transparency and resolving disputes. It also established the Office of Government Information Services within the National Archives and Records Administration to provide mediation services for resolution of disputes between persons making FOIA requests and administrative agencies as well as to provide input and guidance on the effective administration of the FOIA across federal agencies.

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The Open Government Act promotes the use of technology to achieve more efficient disclosure of information to the public. To improve its FOIA management and processes, the EPA deployed FOIAonline, a shared service, as its new FOIA management system in October 2012. FOIAonline automates core processing and administrative activities. All FOIA requests received at the EPA will be managed throughout their lifecycle in FOIAonline. All records provided by the EPA in response to a FOIA request will be entered into FOIAonline for public viewing and searching unless the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies (e.g., contains Confidential Business Information that is only appropriate to release to the requester/owner of the CBI and is not appropriate for public release). These exceptions will be reviewed on a case by case basis by the Agency FOIA Officer. A copy of the exception decision will be maintained in the system. If records provided in response to a request are not entered into FOIAonline because of these conditions, a placeholder document must be uploaded with contact information for obtaining a copy of the response. The organizational unit that has responsibility for responding to the request (known throughout this document as the Action Office) must maintain the records and make them readily available for responding to future requests.

This document does not provide “how-to” instructions for using FOIAonline, but does reference features of the system that help accomplish certain FOIA tasks outlined in this procedure. The Agency sponsors FOIAonline trainings for managers, supervisors and staff and has developed FOIAonline user guides that are available at <https://foiaonline.regulations.gov/foia/action/public/home>.

These procedures are intended to ensure that the Agency responds to FOIA requests in accordance with statutory requirements, the EPA’s implementing regulations, and open government and transparency policies.

Program Offices and Regions will develop or update organizational FOIA procedures to conform to this document within 180 days of this document being finalized. All procedures must be consistent with the EPA’s FOIA regulations and statutory requirements.

These procedures will be supplemented by role-based and general awareness trainings for the audience identified under Section 3, above.

5. AUTHORITY

[Freedom of Information Act](#) , 5 U.S.C. § 552.
[EPA's FOIA Regulations](#), Title 40, C.F.R. Part 2, Subpart A.
[CIO Policy 2157.0, Freedom of Information Act \(FOIA\) Policy](#)

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6. PROCEDURES

The Agency's FOIA regulations direct the public to send FOIA requests, in writing, to EPA Headquarters, Regional FOIA Offices or through a form on the Agency's FOIA website (which provides a link to FOIAonline). Requests received in any other Agency office should be immediately forwarded to the appropriate FOIA Officer so that the requester does not incur undue processing delays. See 40 C.F.R. 2.102(a).

The actions identified in Steps 1-5, below, are performed by staff in FOIA offices. Regions and Program Offices will decide who performs the steps identified in these procedures.

INITIATING THE PROCESS

The FOIA process officially begins when a request is received in any Agency FOIA Office. Requesters may request a fee waiver and/or expedited processing at the time they submit their request.

Step 1 – Receive, Review, and Acknowledge Incoming Requests. The public may submit requests to the Agency via FOIAonline, postal mail, email, or hand delivery. The FOIA Office receiving the request will verify that the request: 1) is in writing; 2) provides a mailing address; 3) asks for Agency records; and 4) reasonably describes the records sought. A description is sufficient if it enables an Agency employee familiar with the subject area to locate the record with a reasonable amount of effort. See also, 40 C.F.R. § 2.102(c).

- ☐ **Improper FOIA requests include:**
 - ☐ *Requests that do not reasonably describe the records sought;*
 - ☐ *Requests that pose questions, rather than seek documents.*
- ☐ **FOIA does not require EPA to:**
 - ☐ *Create new records or future records in response to a request;*
 - ☐ *Re-create records which were properly disposed of;*
 - ☐ *Produce records the Agency retains no control over;*
 - ☐ *Re-provide records which EPA already makes available to the public; or*
 - ☐ *Produce purely personal records.*

If the requestor provided an email address, FOIAonline will automatically send a receipt to the requester that includes the tracking number and submission date for all requests processed in the system. Requests received after 5 pm EST or on weekends or holidays are not considered received until the next business day. If a request is not received through FOIAonline, the FOIA Office will enter the request in the system within one working day of receipt and issue an acknowledgement through FOIAonline if an email address is provided. Postal mail will be used by the FOIA Office if an email address is not provided. The

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acknowledgement letter will provide the tracking number and the date the request was received by EPA.

Step 2 – Determine if the Request is in the Correct FOIA Office. The receiving FOIA Office will determine where responsive records are most likely located in the Agency. When a request is received at an Agency FOIA Office and all responsive records are determined to be located in another Region or Headquarters, the receiving FOIA Office will assign the request in FOIAonline to the appropriate FOIA Office for processing. If the receiving FOIA Office does not know where responsive records are located, the FOIA Office will consult with the Headquarters FOIA Office. See also, 40 C.F.R. § 2.103(a).

The FOIA allows agencies up to 10 working days to route a misdirected request before the 20 working day period to respond begins. For the purposes of this 10 day allowance, a request is “misdirected” if it is sent to a FOIA Office that is not located with the Program or Regional Office that will have the responsive records. Requests sent by the public to an office other than a FOIA Office are also misdirected and must be immediately sent to the local FOIA Office.

After steps 1 and 2 are complete, the request is considered “perfected.” Requests should be “perfected” on the same day they are received by the correct FOIA Office. The FOIA Office will enter the “perfected” status in FOIAonline to initiate the 20 day working period. FOIAonline will automatically initiate the 20 working day period on the 11th working day after the request was received, even if the request has not been perfected.

Step 3 – Determine the Fee Category. EPA FOIA Offices will determine how requesters will be charged processing fees based on their fee category. The fee categories under the FOIA are: (1) Commercial Use, (2) Educational Institution or Non-Commercial Scientific Institution, (3) Representative of the News Media and (4) Other. See also, 40 C.F.R. § 2.107. (See Step 8 below for information on calculating fees.)

Step 4 – Process Fee-Waiver (FW) and Expedited Processing (EP) Requests. All requests for fee waivers and expedited processing must be submitted with the initial FOIA request (see 40 C.F.R. § 2.107(l) (5)). Decisions on FW and EP requests will be made by the Agency FOIA Officer based on the factors outlined in 40 C.F.R. § 2.107(l) (5) and 2.104(e), respectively.

FW and EP requests submitted to a Regional FOIA Office will be transferred by the Regional FOIA Officer to the Headquarters FOIA Office through FOIA-online for processing. (Please note that the region retains the responsibility for responding to the request for records.)

Whether a request is likely billable or unbillable will be communicated to the Headquarters FOIA Office by the organization to which the request is assigned within 48 hours of receipt of the request. The Agency FOIA Officer will determine if fees will likely be incurred by the requester before deciding on the request. (A request for a fee waiver is moot when no fees are associated with processing the request.)

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The Agency FOIA Officer will make the initial decision whether to grant or deny a FW or EP request. The individual assigned the request will be notified via an email from FOIAonline that a determination has been issued. If the FW and EP request is assigned to a group rather than to an individual, FOIAonline will not send an email, but will alternatively provide an internal system message to each group member the next time that person logs on.

The Agency must decide whether to grant or deny an EP request within 10 calendar days of receipt. If the request is granted, it must be given priority by the Action Office and be the next request in line for processing. See C.F.R. § 2.104(3) (4). However, the request itself is not required to be processed within the 10 calendar days.

Step 5 – Assign the Request to the Action Office. In most cases, the FOIA Office will assign the request in FOIAonline to the primary FOIA Coordinator in the Program or Regional Office believed to most likely house the majority of responsive records. The FOIA Coordinator will assign a lead office within that organization (the “Action Office”). When the requester is seeking records about or created by an individual, the organization where the individual worked at the time the records were created will become the Action Office and have responsibility for processing the request.

Often, additional Programs and/or Regions may have responsive records (“Contributing Office”). The Action Office will assign each Contributing Office a task in FOIAonline for them to provide responsive records. These Contributing Offices will coordinate the Agency’s response with the Action Office, including uploading responsive records to the system.

PROCESSING THE REQUEST IN ACTION OFFICES

An organization’s¹ internal FOIA processing procedures will determine who performs steps 6-16 identified in this procedure on behalf of the Action Office and the FOIA Coordinator. However, the steps will remain the same regardless of who performs them.

At Headquarters, each Office of an Assistant Administrator and the Office of the Administrator has a primary FOIA Coordinator who receives the assignment from the Headquarters FOIA Office. FOIA requests in regions are received by the Regional FOIA Officer who selects the appropriate division, branch or individual within the organization which is known as the Action Office. Regions have a primary FOIA Coordinator and the function may be performed by various staff persons. At Headquarters, the primary FOIA Coordinator will assign the request to the Action Office. Non-primary FOIA Coordinators may also be located at the division and branch levels at Headquarters and in regions depending on the business practices of the particular organization. An organization’s business practices determine the workflow and roles and responsibilities when a request is received for action. These practices will be detailed in the organization’s FOIA procedures.

¹ An EPA region (e.g., Region 1) or the Office of an Assistant Administrator (e.g., OGC).

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When an assignment is received from a FOIA Office, the primary FOIA Coordinator or regional person (designated by the Regional FOIA Officer) will determine which of the offices in the organization (e.g., staff offices, divisions, or branches) are likely to have records responsive to the request. The primary FOIA Coordinator or regional person will assign the request to the appropriate office or FOIA professional using FOIAonline. If the description of the records requested is not sufficient for the primary FOIA Coordinator or regional person to assign the request to an office, the primary FOIA Coordinator or regional person will contact the requester for additional information. All communications, including verbal conversations with the requester, will be documented for the official record and entered into FOIAonline. Communications may include discussion of scope, deadlines, or other issues.

NOTE: For large, complex FOIA requests, it is suggested that the Action Office convene meetings with all interested Agency parties in order to clarify responsibilities, methods to be used for collection, and similar issues. Those meetings should include programmatic experts, Records Liaison Officers, information technology specialists, and legal counsel, as appropriate.

Step 6 – Determine Search Parameters. The Action Office will determine the cut-off date for records subject to the request. Under the EPA’s regulations (40 C.F.R. § 2.103 (a)) for determining what records are within the scope of the request, the Action Office will usually include only those records in its possession as of the date the request was received by the FOIA Office, unless the request specifically seeks a more limited scope. If a different date is used, the Action Office will inform the requester of that date.

The request will also be reviewed to determine the subject matter of the records the requester is seeking. If it is deemed necessary for the person processing the FOIA to obtain clarification or additional information from the requester, the time necessary to reformulate the request will be excluded from the statutory 20 working day period (or any authorized extension of time) that the EPA has to respond to the request. The FOIA permits the Agency to “stop the clock” **one** time during the first 20 days after receipt, to seek information and clarification from the requester. Although the requester may be contacted as many times as needed to clarify the scope of the request, the clock may only be stopped once. Once the clock has been stopped, it should not be restarted until the information or clarification is provided. All communications must be documented for the official record and entered into FOIAonline, and the deadlines adjusted in the system, as appropriate.

Step 7 – Determine if Additional Responsive Records are in Other Agency Organizations. When additional responsive records are determined to be located in other Agency organizations, or the request is incorrectly assigned, the appropriate FOIA Office should be notified by the FOIA Coordinator or the organizational subject matter expert within two working days of receiving the assignment. Action Offices should return misdirected requests to the local FOIA Office for re-assignment within two working days.

NOTE: The FOIA Office will create a task in FOIAonline to request additional records from

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another EPA organization.

Step 8 – Estimate Processing Fees. The EPA’s FOIA regulations require an assurance of payment from the requester if fees are expected to exceed \$25.00 or an amount specified by the requestor. Unless a waiver of fees has been granted by the Agency FOIA Officer, the Action Office will estimate the processing fee which will be charged as specified in 40 C.F.R. § 2.107. Search fees may apply even when no responsive records are identified or no responsive records are disclosed to the requester. The EPA’s FOIA Regulations (40 C.F.R. § 2.107(j)) also define circumstances where it may be appropriate to require advance payment of the estimated fees, if the fees are expected to exceed \$250.

Fees are determined by the type of staff performing the work, the type of requester, and the category of work performed. Fees are calculated as follows:

Type of Staff	Charge Per Quarter Hour
Clerical Staff	\$4.00 per ¼ hr
Professional Staff	\$7.00 per ¼ hr
Managerial Staff	\$10.25 per ¼ hr

Type of Requester	Fee Category to be Charged		
	Search	Review	Duplication
Commercial	Yes *	Yes	Yes
Educational	No	No	Yes (100 pages free)*
Non-commercial	No	No	Yes (100 pages free)*
Scientific	No	No	Yes (100 pages free)*
News Media	No	No	Yes (100 pages free)*
All Others	Yes (First 2 hours free)*	No	Yes (100 pages free)

*Fees shaded in grey above cannot be charged if the Agency fails to comply with time limits for response.

Step 9 - Determine Response Time. The FOIA requires agencies to provide a substantive response within 20 working days. In such instances when the Action Office determines the response cannot be completed within 20 working-days, the EPA may extend the due date if “unusual circumstances,” as defined by the FOIA, apply.

An “unusual circumstance” exists when there is: (1) a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; (2) a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; and (3) a need for consultation, which will be conducted with all practicable speed, with another

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agency or among two or more components of the EPA having a substantial interest in the determination of the request.

If unusual circumstances exist and there is a need to extend the due date for 10 working days or less, the Action Office must, within the 20 working day time limit, notify the requester in writing that unusual circumstances exist and provide the new due date. When the unusual circumstances result in a need to extend the due date for more than 10 working days, the Action Office must also provide the requester, within the 20 working days, the contact information for the EPA's FOIA Public Liaison and an opportunity to either (a) modify the request so that it may be processed within the 10 working day extension or (b) arrange an alternative time period for processing the original or modified request.

If unusual circumstances do not exist, or if the due date has already been extended and additional time is needed to complete the response, the Action Office should seek a reasonable extension from the requester. To aid the requester, the Action Office will provide the requester the contact information for the EPA FOIA Public Liaison, who will assist in the resolution of any disputes between the requester and the EPA. If the requester does not agree to an extension, the Action Office will fulfill the request as soon as possible. The requester may file an administrative appeal or may pursue litigation. For instances where the FOIA requester is the prevailing party of a litigation case and the EPA is required to pay legal fees, please refer to Office of the Chief Financial Officer's FOIA Fee Policy, RMDS 2540-04-P2. In any event, the Action Office should communicate any extensions and expected completion dates with the requester. All communications must be documented for the official record and entered into FOIAonline.

The Action Office also enters the new requested due date and the justification for the extension into FOIAonline. The system generates a notice to the Headquarters or appropriate Regional FOIA Office for approval. The FOIA Office will make a decision within two working days, document the decision, with comments if necessary, in FOIAonline, and communicate the new date to the Action Office. The Action Office will communicate the new due date to the requestor.

Step 10 – Collect and Review the Records. The Action Office and each Contributing Office is responsible for identifying, collecting and reviewing records within the scope of the request as discussed in Step 6, and as outlined in any organization-specific procedures. This includes the responsibility for consultation and referral with other federal agencies. Contributing Offices are also responsible for coordinating responsive activities with the Action Office (i.e., the office that is determined to have the majority of responsive records) when more than one office has responsive records (see Step 5 above). The Action Office and each Contributing Office should also assure that protected information has been redacted from records before they are released.

The Action Office and Contributing Offices will: 1) ensure that redacted information cannot be read through photocopied records; 2) remove "hidden" metadata as appropriate (e.g. Microsoft Word document properties); and 3) annotate records with the applicable FOIA exemption(s) at the location of the redacted information. A copy of both the original and redacted record will be

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stored in FOIAonline, unless subject to special handling requirements (e.g., large volume) or policies. Exceptions to this storage requirement are approved on a case by case basis by the Agency FOIA Officer. FOIAonline allows FOIA professionals to put records in the system that are not released to the public. This protects records that have been withheld.

If records provided in response to a request are not entered into FOIAonline because of special handling requirements or policies, or because the volume of files make it impractical to upload the complete response, a placeholder document must be uploaded with contact information for how to obtain a copy of the response that the responding office will maintain and make readily available.

NOTE: Only records that have been: 1) marked published and 2) approved for release are available to the public in FOIAonline.

Step 11 – Determine Which Records (or Portions) May Be Released. After thorough review, the Action Office will prepare to release responsive, non-exempt records or portions of records. All records released or being withheld in total in response to a FOIA request must be reviewed by at least two knowledgeable individuals, including one manager or supervisor to ensure openness, transparency, consistency, and the appropriate application of FOIA exemptions. One of the reviews may be performed by the individual who processes the request. Action Offices may consult with the Agency FOIA Officer, their Office of Regional Counsel (ORC), or Office of General Counsel (OGC) for questions regarding withholding of records under a FOIA exemption. If a discretionary FOIA exemption (Exemptions 2, 5, 7 (excluding 7(c)), 8 and 9) is implicated, Action Offices should only withhold records, or portions of records, when they reasonably foresee that disclosure would harm an interest protected by one of the exemptions or when disclosure is prohibited by law.

Responsive records that have been properly reviewed and redacted (if necessary) will be subject to one of the following outcomes:

- a) Release in Full. The record, in its entirety, may be released to the requester.
- b) Partial Grant/Partial Denial. Portions of the record will be withheld from the requester if covered by either one or multiple FOIA exemptions. The portions of the record that are not redacted are released to the requester.
- c) Withhold in Full. The record, in its entirety, will be withheld from the requester if covered by either one or multiple FOIA exemptions.
- d) No Record. If, after a reasonable search likely to uncover all responsive documents, no records are located that are responsive to the request, the requester will be informed in writing. A no records certification form must be completed for no record responses and entered in FOIAonline. Please note: This form is not sent to the requester.
- e) Confidential Business Information (CBI). For records or parts of records that have been claimed as CBI or would be claimed as CBI if the business knew the EPA proposed to disclose the information, the procedures set out in 40 C.F.R. § 2.204 must be followed.

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- f) Glomar Response. In some instances, the EPA may expressly refuse to confirm or deny the existence of records responsive to a FOIA request; this is called a Glomar response. The response letter will inform the requester that the request is denied because "either the records do not exist or they are exempt from mandatory disclosure under the applicable provision of FOIA." The Action Office must obtain approval from OGC or ORC prior to issuing a Glomar response.

Step 12 – Prepare Response Letter. The Action Office will prepare the response letter using standard language, if suitable, and obtain necessary concurrences. All response letters must include: (1) the FOIA tracking number and (2) appeal language, as appropriate. FOIA requesters have the right to appeal initial FOIA decisions made by the EPA if:

- No records were found;
- The response time has exceeded the statutory authority or documented extensions;
- The request for expedited processing was denied;
- The request for a fee waiver was denied;
- The requestor believes some records or portions of records were improperly withheld;
- The requestor believes the search was inadequate; or
- The requestor believes the fee category in which they were placed is incorrect.

In addition, response letters that withhold Agency records, in total or in part, are required to identify the:

- Records withheld individually or by category of similar documents if voluminous;
- Applicable FOIA exemption(s) under which the record is being withheld and a brief statement explaining the reason for the denial; and
- Authorizing official by name and title (see Step 14 below for list of Authorized Officials).

Step 13 – Finalize Processing Fees. The Action Office will inform the requesters in the response letter if fees for processing the request are not billable (i.e., equal to or less than \$14.00). If the processing fees are billable (i.e., greater than \$14.00), FOIAonline will generate the invoice.

NOTE: The Administrative Cost section in FOIAonline must be completed to document billable and unbillable costs in FOIAonline. All offices working on a request will enter their administrative costs in FOIAonline. The EPA is required to document actual fees charged to the public (billable) and the administrative costs (unbillable) incurred by the agency in processing FOIA requests.

Step 14 – Obtain Approval from an Authorized Official to Release or Withhold Records. The Deputy Administrator, Assistant Administrators, Regional Administrators, the General Counsel, the Inspector General, Associate Administrators, and heads of headquarters staff offices (or their appropriate designee) are delegated the authority to issue initial determinations

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to release or withhold records in response to FOIA requests. See EPA Freedom of Information Delegation of Authority, Section 1-30.

NOTE: Initial determinations (both release and withholding determinations) may be redelegated only to persons occupying positions not lower than division director or equivalent.

Step 15 – Respond to Request. The Action Office will provide the response letter, responsive records and invoice (when applicable) to the requester through FOIAonline. If an email address is provided, the requester will be notified via email that the responsive records are available in FOIAonline. Otherwise, the response package will be provided via postal mail.

The response letter must include a description of the information withheld either by category and volume, or by a list. In all cases the response letter must also include the standard administrative appeal language.

Step 16 – Finalize Actions. The Action Office will ensure all supporting documentation is entered in FOIAonline (e.g., records of conversations or notes to the record). The record copy of the FOIA response will be maintained in FOIAonline, including all responsive records. Once published, these records become available for public searching and viewing.

If the volume of paper records is very large and conversion to electronic format is not practical or the response is subject to special handling requirements or policies, the Agency FOIA Officer will consider granting an exception to the requirement to load the records into FOIAonline. Reviews are made on a case by case basis. A copy of the decision by the Agency FOIA Officer will be maintained in the system. If the exception is granted, a placeholder document must be uploaded in FOIAonline with contact information for obtaining a copy of the responsive records. The Action Office that has responsibility for responding to the request must maintain the records according to applicable record schedules and make them readily available for responding to future requests.

The Action Office will close the request in FOIAonline.

7. RELATED DOCUMENTS

- <http://www.epa.gov/FOIA/FOIAregs.htm>
 - <http://www.justice.gov/oip/amended-FOIA-redlined.pdf>
 - <http://intranet.epa.gov/oei/imitpolicy/qic/ciopolicy/2171-p-01.pdf>
 - <http://www.archives.gov/about/organization/summary/ogis.html>
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8. ROLES AND RESPONSIBILITIES

Action Office – The organizational unit that maintains the majority of records responsive to a FOIA request.

Agency FOIA Officer – The Agency FOIA Officer is the program manager for the National FOIA program. The Agency FOIA Officer coordinates and oversees the EPA FOIA administration responsibilities; issues expedited processing and fee waiver determinations; develops and reviews FOIA procedures, policies, and guidance; provides advice to Agency FOIA personnel in the program and regional offices; prepares annual reports to the Department of Justice (DOJ); and provides FOIA training to agency employees and other individuals covered under Section 3 of these procedures. The Agency FOIA Officer is located in the Office of Environmental Information at EPA headquarters.

Authorized Officials – The Deputy Administrator, Assistant Administrators, Associate Administrators, the Inspector General, the General Counsel, Heads of Headquarters Staff Offices and Regional Administrators (or their appropriate designee) are authorized under section 2.113(b) of EPA's FOIA regulations to issue initial determinations to release or withhold records in response to FOIA requests. Freedom of Information, EPA Delegations Manual, Chapter 1, Section 30, provides that this authority may be redelegated to the office director level or equivalent, who may redelegate to the division director level or equivalent.

Contributing Office – Organizational units that possess responsive records in addition to the Action Office.

Chief FOIA Officer – The designated high-level official within each federal agency who has overall responsibility for the agency's compliance with the FOIA. At the EPA, the Assistant Administrator for the Office of Environmental Information is the Chief FOIA Officer. The Chief FOIA Officer is responsible for ensuring the efficiency and effectiveness of the Agency's FOIA administration including compliance, accountability and reporting to the Administrator, the Department of Justice, and the Office of Management and Budget on the status of the Agency's FOIA program. NOTE: This role is different from that of the Agency FOIA Officer above.

FOIA Coordinators – FOIA Coordinators stay informed on requests and assignments; route requests to the appropriate Action Office or subject matter expert within the Program Office; track FOIA requests for timeliness; monitor the quality of the responses; and provide guidance to program personnel including overdue reports, in collaboration with the Agency FOIA Officer. Each Headquarters Program Office has a lead FOIA Coordinator who works under the general direction of the Agency FOIA Officer. See also "Primary FOIA Coordinators".

FOIA Officer – See "Agency FOIA Officer" or "Regional FOIA Officers."

FOIA Offices – The FOIA Office is the point of receipt for Agency FOIA requests where they are reviewed for conformance with the Act, acknowledged and assigned to the appropriate

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Action Office. The locations are identified in the EPA's FOIA regulations for submitting FOIA requests. Agency FOIA Offices are located in each Region and in the National FOIA Program at Headquarters.

FOIA Professional – An EPA employee or contractor who directly interacts with FOIA requesters and is responsible for the day-to-day FOIA processing activities.

FOIA Public Liaison – The FOIA Public Liaison is the EPA contact point for the public if they have any issues with the handling of their FOIA request by the Agency. In the EPA, the FOIA Public Liaison is the Chief of the FOIA and Privacy Branch in the Office of Information Collection within the Office of Environmental Information. The Public Liaison supervises the staff in the FOIA Requester Service Center and is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

FOIA Requester Service Center – The FOIA Requester Service Center (FOIA Hotline) provides the public information on the status of their requests if they do not have access to FOIAonline, general information on how and where to submit a FOIA request, or information about the types of information available on the EPA's websites. The Center is staffed by the FOIA Public Liaison, Agency FOIA Officer and National FOIA Specialists. The Hotline number is 202-566-1667.

Managers and Supervisors – EPA managers and supervisors oversee FOIA Officers and FOIA Coordinators to ensure that they have the knowledge, skills and ability to perform their duties and respond in a timely manner in accordance with the FOIA. They review and approve all FOIA responses before release.

National FOIA Program – The National FOIA Program is staffed by the Agency FOIA Officer and National FOIA Specialists who develop Agency-level policies, procedures and trainings, respond to questions, provide guidance, deliver training, and make decisions on fee waiver and expedited processing requests. The National FOIA Program is located in the Office of Environmental Information.

National FOIA Specialists – National FOIA Specialists manage the lifecycle of FOIA requests received at Headquarters; assign requests to Headquarter FOIA Coordinators; prepare responses to fee waiver and expedited processing requests; approve requests to extend due dates; respond to questions from Agency employees; and staff the FOIA Requester Service Center.

Office of General Counsel (OGC) – OGC provides legal advice on FOIA matters; issues final decisions on FOIA appeals, final confidentiality determinations for CBI claims originating in HQ, and fee waiver appeal determinations, except when a conflict of interest arises; provides counsel on FOIA exemptions and exclusions; and assists the U.S. Department of Justice attorneys in FOIA litigation.

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Office of Inspector General (OIG) – OIG and the Counsel to OIG provide advice on FOIA matters pertaining to its organization; issue initial determinations and final decisions on FOIA appeals, final confidentiality determinations, except when a conflict of interest arises; provide counsel on FOIA exemptions and exclusions; and assist the U.S. Department of Justice attorneys in FOIA litigation.

Office of Regional Counsel (ORC) – ORC provides legal advice on FOIA matters, final confidentiality determinations for CBI claims originating in the Region, FOIA litigation support to regional employees, and information as needed to the Agency FOIA Officer on fee waiver requests. ORC also assists OGC on appeals, as appropriate.

Primary FOIA Coordinator – The lead FOIA Coordinator in an organization who works under the general direction of the Agency FOIA Officer.

Regional FOIA Officers – Regional FOIA Officers assign requests to the appropriate Action Office within the region; track FOIA requests; provide guidance to regional personnel in collaboration with the Agency FOIA Officer; coordinate with the Agency FOIA Officer and Action Offices on initial fee waiver decisions; compile data for the annual FOIA report; and monitor the quality and timeliness of responses in the regions. Regional FOIA Officers work under the general direction of the Agency FOIA Officer.

Subject Matter Experts – Subject matter experts identify and locate records requested under FOIA. These individuals are located in all EPA organizations and include all professional disciplines. If permitted under the applicable delegation and after obtaining any necessary concurrences, the subject matter experts may respond to requests directly or provide the responsive records to the FOIA Coordinator who facilitates the response for the Agency. They must, however, follow the review process prescribed in this procedure.

9. DEFINITIONS

Administrative Appeal – An independent review of the initial determination made in response to a FOIA request. Requestors who are dissatisfied with the response made on their initial request have a statutory right under 40 C.F.R. § 2.104(j) to appeal the initial determination to an office in the Agency which will conduct an independent review. *(NOTE: OGC is responsible for managing all FOIA appeals at the EPA with the exception of appeals that involve FOIA requests to the OIG or FOIA requests where OGC is the Action Office on the initial response. OIG handles its own appeals. The Office of the Administrator processes appeals where the OGC is the Action Office on the initial response.)*

Case – All records pertaining to a FOIA request.

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Commercial Use – A type of request from or on behalf of a person who seeks information for a use or purpose that furthers his/her commercial, trade, or profit interests, which can include furthering those interests through litigation.

Consultation – When an agency locates a record or a record that contains information provided by or of interest to another agency, it will ask for the views of that other agency on the disclosability of the records before any final determination is made. This process is called a “consultation.” (See also “referral.”)

Confidential Business Information – Trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential.

Educational Institution – A preschool, public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education or an institution of vocational education, which operates a program or programs of scholarly research.

Existing records – Agency records that exist as of the date a FOIA request is received by the EPA.

Expedited Processing – The processing of a FOIA request out of the order in which it was received and prioritized over other pending FOIA requests. The standards for expedited processing are set out in the FOIA and in the regulations of each federal agency.

Fee Categories – Categories under FOIA that determine assessments of fees to requesters. Requesters fall into one of five fee categories: (1) commercial requesters; (2) educational; (3) noncommercial scientific institutions; (4) representatives of the news media; and (5) all other requesters (i.e., requesters who do not fall into any of the other four categories).

Fee Waiver – A request made to an agency to waive any applicable fees for its processing of a FOIA request. Fee waivers are limited to situations in which a requester can show that the disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the government and is not primarily in the commercial interest of the requester. Requests for a fee waiver are evaluated on a case-by-case basis.

FOIAonline – The EPA’s FOIA tracking and management system.

FOIA Exemptions – Contained at 5 U.S.C. § 552(b) (1)-(9). See <http://intranet.epa.gov/foia/exemptions.html> or the box on page 2 of these procedures.

FOIA Time Limits – The time period in the FOIA statute for an agency to respond to a FOIA request (ordinarily twenty working days from the day a FOIA request is received and logged in by the appropriate FOIA Office).

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Freedom of Information Act (FOIA) – The Freedom of Information Act (FOIA) was signed into law in 1966. The law provides individuals with a statutory right of access to certain federal agency records. The FOIA requires agencies to disclose requested records unless they are protected from public disclosure by the FOIA. Congress included in the FOIA nine exemptions and three law enforcement exclusions to protect important interests such as national security, personal privacy, privileged communications, and law enforcement.

Full Denial – An agency decision not to release any records in response to a FOIA request because the records are exempt in their entirety under one or more of the FOIA exemptions, or because of a procedural reason, such as when no records could be located. A denial response must be signed by an Authorized Official.

Full Grant – An agency decision to disclose all records in full in response to a FOIA request.

Glomar Response – An agency's express refusal to confirm or deny the existence or non-existence of records responsive to a FOIA request.

Initial Request – The request submitted by an individual to a federal agency for access to agency records on any topic. A FOIA request can generally be made by any person, to any federal agency, and only requires that requesters reasonably describe the records they are seeking and comply with agency regulations for making such requests.

Media Requester – Any person making a FOIA request who actively gathers news for an entity that is organized and operated to publish or broadcast news to the public that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A request for records that supports the news-dissemination function of the requester shall not be considered to be for a commercial use.

Non-Commercial Scientific Institution – An institution that is not operated on a commercial basis but operated solely for conducting scientific research, the results of which are not intended to promote any particular product or industry.

No Records Response – A FOIA request for which no responsive records were located.

Partial Grant/Partial Denial – An agency decision to disclose records or portions of records while withholding other records or portions of records that are exempt under the FOIA, or to otherwise deny a portion of the request for a procedural reason.

Pending Request or Administrative Appeal – A request or administrative appeal for which an agency has not taken final action in all respects.

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Perfected Request – A request for records that clearly describes the records sought and the procedures that will be followed to develop a response.

Processed Request or Processed Administrative Appeal – A request or administrative appeal for which an agency has taken final action in all respects.

Records – Information in an agency's possession and control in any format including electronic format. DOJ notes that for FOIA purposes, "records" includes *all* tangible documentations of information regardless of whether they are records under 44 U.S.C. § 3301. (NOTE: This is a broader definition than that used by the EPA records program and records schedules.)

Redact – The act of removing exempt information from responsive documents either manually or utilizing redaction software.

Referral – When an agency locates a record that originated with, or is of otherwise primary interest to another agency, it will forward that record to the other agency to process the record and to provide the final determination directly to the requester. This process is called a "referral." (See also "consultation.")

Requester – Any individual (including non-U.S. citizens), corporation or association, public interest group, and state, local, tribal, or foreign government making a FOIA request. Requests from federal agencies, the Government Accountability Office, or Congress (e.g., the Speaker of the House, the President of the Senate, or the chair of a committee or subcommittee) are not processed under these procedures.

Responsive Record – A record falling within the scope of a FOIA request that an agency has located that may be provided or is under consideration for inclusion in a response to a FOIA request. A record may be "responsive" to a FOIA request, but may still be withheld as protected from disclosure by a FOIA exemption.

Unusual Circumstances – When there is: (1) a need to search and collect documents from organizations separate from the organization processing the request; (2) a need to search and collect a large volume of records; or (3) a need to consult with another agency (or a separate subdivision of the same agency) having a substantial subject-matter interest in the request.

10. WAIVERS

No waivers will be accepted from the requirements of this procedure.

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11. RELATED PROCEDURES, STANDARDS AND GUIDANCE

Not applicable.

12. MATERIAL SUPERSEDED

Interim Procedures for Responding to Freedom of Information Act (FOIA) Requests (CIO 2157-P-01-0/Transmittal 13-010 dated September 30, 2013)

13. ADDITIONAL INFORMATION

This document is not intended to create any rights or privileges for the public, or obligations on the part of EPA.



Renee P. Wynn
Acting Assistant Administrator for Environmental Information
and Chief Information Officer
U.S. Environmental Protection Agency

**Appendix B: “OECA’s Commitment to Fulfilling Its FOIA Responsibilities” Memorandum
(June 23, 2014)**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 23 2014

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: OECA's Commitment to Fulfilling Its FOIA Responsibilities

FROM: Lawrence Starfield, Principal Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: All OECA Employees

The purpose of this message is to emphasize how important it is that all managers and staff in the enforcement program take seriously their Freedom of Information Act (FOIA) obligations and to let you know about the status of numerous past and ongoing efforts to enhance our ability to meet our important FOIA obligations.

Why FOIA is an Important Part of Our Job

As many of you know, one of President Obama's first actions as President was to emphasize a new era of openness. On his first full day in office (January 21, 2009), the President issued a Memorandum for the Heads of Executive Departments and Agencies that: (1) highlighted the importance of the FOIA law as a vehicle for encouraging "accountability through transparency;" and (2) directed federal agencies to develop new guidelines governing FOIA implementation.

In the past several years, we have seen considerable focus on FOIA matters, both within and outside EPA. Some of this has involved enforcement-related matters, including requests from Congress and litigants in our cases. It is important to be vigorous in our implementation of the FOIA law to meet our legal obligations and our duty to the public, as well as to help ensure that the enforcement program's interests are not compromised. To meet these goals, we want to ensure that all staff and managers are well-educated about FOIA matters and proficient in using the appropriate tools and strategies to process FOIA requests.

Please also note that OEI has started to circulate quarterly "scorecards" that highlight the timeliness of every EPA organization's responses to FOIAs. These "scorecards" can be found at <http://intranet.epa.gov/foia/FOIA-Status-Reports.html>. By optimizing our use of all available and appropriate tools and resources, we are confident that OECA's scorecards will reflect the excellent work that everyone does to meet these important obligations.

Tools and Resources to Help OECA Process FOIA Requests

The Agency now uses the "FOIAOnline" electronic portal to track and post FOIA requests, status updates, and responses (including documents released), and that is already providing significant savings in terms of resources spent on FOIA matters. OEI developed FOIAOnline training that is mandatory for all FOIA managers, and available to all managers and staff. The training can be accessed at <http://intranet.epa.gov/foia/foia-trainings.html>. Additional electronic tools are also generating efficiencies in how we process FOIA requests. In November 2013, EPA began deployment of the Relativity software system to aid in the review of documents for FOIA privilege, and EPA plans to deploy other tools to allow for more efficient collections of potentially responsive documents. The Agency also created a new FOIA intranet site at <http://intranet.epa.gov/foia/index.html>, and is developing a FOIA internet site at <https://wcms.epa.gov/foia>. All of these agencywide efforts are moving us into the next generation of FOIA management.

Within OECA, the Office of Civil Enforcement has developed FOIA Practice Tips aimed at further increasing its efficiency in handling FOIA requests, which is attached, for your information. OECA is also working with OGC on updates to OGC's short summary of common FOIA exemptions.

Managing the FOIA Process Within OECA

For many years, OECA has had FOIA Liaisons in each of its Offices, and that continues. Last year, we also created an OECA FOIA Workgroup, led by Caroline Makepeace and Mary Wilkes, to help guide us through the changes in FOIA processing and to develop a strategy for ensuring long term success in meeting our FOIA responsibilities. The Workgroup representatives from each OECA Office will now serve as contacts with whom the OECA immediate office will coordinate on FOIA matters, such as reviewing new FOIA policies and disseminating information about FOIA matters. Erin Miles and Maya Lee Newman are the OECA front office contacts on FOIA matters and will continue to coordinate FOIA issues across OECA. Please contact Erin Miles at 202-564-2038 if you have any questions about this memorandum.

Attachment

OCE FOIA Processing Tips

January 30, 2014 (revised 5/14/14)

Prepared by Gary Jones
Office of Civil Enforcement
Special Litigation and Projects Division

1. Seek to Clarify and/or Narrow Overbroad or Imprecise Requests:

- ⊙ Make sure that the request reasonably identifies the records requested and work with requesters to revise any imprecise or overbroad requests.

NOTE: On December 18, 2013, a judge in the Western District of Oklahoma ruled in favor of EPA and dismissed a FOIA lawsuit brought by 12 States based on the court's finding that the states had not submitted a valid FOIA request (Oklahoma et al. v. EPA, Case No. CIV-13-726-M). Their request had asked for *any and all documents* that discuss *or in any way relate* to "certain actions" under the Clean Air Act. The court found that "the term 'certain actions' is not defined or limited in any manner and a professional EPA employee would be left to guess which of the hundreds of actions . . . plaintiffs are actually interested in . . . and , thus, which documents are being sought."

- ⊙ Refer requesters to responsive information already in the public domain and work with them to clarify or narrow the scope of any overbroad or imprecise requests in a way that meets their needs

2. Try to Agree on Search Limits:

- ⊙ Try to get requesters to agree on specific custodians, search terms, date ranges, data sources, and/or file types that must be searched.

3. Consider Litigation Risks:

- ⊙ If FOIA or other litigation in this matter is reasonably anticipated, issue document preservation (*i.e.*, litigation hold) instructions and avoid duplicative document collections by ensuring that all needed data, including metadata, is retained during the FOIA collection.
- ⊙ If FOIA or other litigation is not likely at any point, easier collection processes may be appropriate.

4. Consider Whether and How to Divvy Up Document Review Responsibility:

- ⊙ Persons or offices that generated documents may (or may not) be able to more efficiently review documents for harm and/or privilege. But, there are at least four things to consider in deciding whether/how to divvy up responsibility for document review:

- It spreads the burden, thereby making it easier to meet our review deadlines.
- Offices that generated documents may be in a better position to ascertain whether releasing a document may cause harm to EPA's or the federal government's interest because they are more familiar with context and background in which the document was generated. This can speed things along as well.
- If documents might embarrass or otherwise cast that office in an unfavorable light, others may be in a better position to review those documents.
- OCE also might need to check on at least some of the documents reviewed by other offices (e.g., the most sensitive documents or a random sample), to reasonably ensure that consistent and accurate privilege determinations are made.

5. Do Harm Analysis Before Evaluating Whether Discretionary Privileges Apply:

- ⊙ Although certain privileges such as those dealing with personal privacy cannot be waived, other privileges are discretionary, such as the deliberative process, attorney-client, and attorney work product privileges.
- ⊙ The 1/21/09 Obama and 3/19/09 Attorney General Holder FOIA memos contain a presumption of disclosure, and the 3/19/09 Holder memo establishes an administration policy that DOJ will only defend the assertion of discretionary privileges where the agency reasonably foresees that disclosure would harm an interest protected by one of the FOIA exemptions.
- ⊙ As a result, if we can first determine that there is no such harm to releasing a document (while making sure to evaluate potential harm to the interests of all parts of the agency and not just the responding office), we may be able to avoid the need to undertake a lengthy and burdensome legal analysis concerning whether any of the discretionary privileges apply.

6. Consider Whether It Is Appropriate to Release or Withhold Documents in Their Entirety:

- ⊙ If a document is entitled to protection under the attorney-work product privilege, we are not required to segregate the facts and we usually can withhold the entire document.
- ⊙ If a document is entitled to protection under the deliberative process privilege, the FOIA law requires agencies to disclose any reasonably segregable nonprivileged portion of such responsive documents.
- ⊙ Where the privileged and nonprivileged portions of a document are required to be segregated, consider whether the burden of redacting privileged portions is so substantial as compared to the harm of releasing the entire document.
 - If an analysis of harm to all agency interests justifies releasing the entire document, doing so can save resources.
 - If there may be harm in releasing a large quantity of documents in their entirety, consider negotiating with requesters, to determine whether it may be appropriate to

narrow or eliminate the obligation to redact certain types or categories of documents (e.g., see if the requester is willing to receive redacted copies of certain drafts, rather than all drafts, of a document that underwent substantial revision).

- Where the burden to segregate and redact documents that are entitled to protection under the deliberative process privilege is not reasonable (e.g., where privileged and nonprivileged material is “inextricably intertwined” and redaction would impose “significant costs on the agency” and produce edited documents with “little informational value”), discuss with OGC the appropriateness of relying on federal appellate case law to support an argument that we need not redact such documents. Covington v. McLeod, No. 09-5336, 2010 U.S. App. LEXIS 14871 (D.C. Cir. July 16, 2010) (*Per curiam*).

7. **Consider Phased or Rolling Productions:**

- ⊙ Consider producing some responsive non-harmful information as soon as possible.
- ⊙ These actions may buy some good will and perhaps more time to work on release determinations for more voluminous and/or complex documents.
- ⊙ Make sure to notify the requester in your final production of the requester’s appeal rights.

8. **Consider Describing Documents Withheld By Category:**

- ⊙ Remember that the basis for withholding large numbers of similar documents may be described narratively in categorical terms rather than in an item-by-item listing, and that the number of such documents can be described narratively and need not be specified in precise quantitative terms. 40 CFR 2.104(h).

9. **Understand the Appeal Process:**

Remember that:

- ⊙ Requesters waive their right to judicial review if:
 - the agency responds within 20 working days; and
 - the requester does not appeal an adverse determination (e.g., a denial) within 30 days after the date of the adverse determination.
- ⊙ EPA’s Office of General Counsel has a second opportunity to review the appropriateness of OCE’s initial withholdings and may remand the request back to OCE for further processing and possible release of documents.
- ⊙ This tip does not mean to encourage careless initial determinations about what documents to release or withhold, or to suggest that all ties go in favor of EPA deciding to withhold a document. But, if you have a reasonably good faith basis for withholding a document and are not entirely sure about your legal basis, you might not be making the agency vulnerable to liability for fees or subject to a lawsuit in federal court.

10. **Maximize Use of Appropriate and Available Agency Automated Tools:**

- ⦿ Current and future tools may be able to enhance efficiency during efforts to:
 - search and collect documents;
 - eliminate duplicates;
 - group together related documents;
 - identify presumptively releasable and non-releasable documents;
 - conduct privilege review;
 - redact documents; and/or
 - prepare Vaughn indices documenting withholding justifications.

11. **Consult Useful FOIA Resources:**

- ⦿ See DOJ's FOIA website at <http://www.justice.gov/oip/>
- ⦿ See EPA's FOIA website at <http://epa.gov/foia/>
- ⦿ Contact your OCE FOIA legal contacts below:
 - SLPD: Gary Jonesi
 - WCED: Stephanie Brown
 - WED: Bob Fentress, Kelly Brantner
 - AED: Sara Froikin, Seema Kakade

Appendix C: OECA FOIA Contacts

OECA Primary FOIA Coordinator:	Maya Newman (on detail) Linda Person	(202) 564-2483 (202) 566-1661
OECA Immediate Office:	Erin Miles	(202) 564-2038
Office of Administration and Policy	Wanda (S) Williams	(202) 564-5154
Office of Compliance	Jernell Battle	(202) 564-5053
Office of Civil Enforcement	Julia Bunnell	(202) 564-1317
Office of Criminal Enforcement, Forensics and Training	Isabelle Pettiford Tom Seaton	(202) 564-7396 (202) 564-2544
Office of Environmental Justice	Tayoka Hall	(202) 564-0963
Office of Federal Activities	Shelly Dawson	(202) 564-2633
Federal Facilities Enforcement Office	Stuart Hunt	(202) 564-2591
Office of Site Remediation Enforcement	Debbie Hester Antoinette Powell-Dickson	(202) 564-4243 (202) 566-5136